

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 3/24/11
DATE FILED: 3/24/11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

R. DAVIS HOWE, individually and derivatively,
Plaintiff,
- against -
THE BANK OF NEW YORK MELLON, as Indenture
Trustee, BIMINI CAPITAL MANAGEMENT, INC.,
and HEXAGON SECURITIES LLC
Defendants
and THE BANK OF NEW YORK MELLON, as
Indenture Trustee, and PREFERRED TERM
SECURITIES XX, LTD.,
Nominal Defendants.

No. 09-CV-10470 (HB)

ECF Case

STIPULATION AND ORDER OF VOLUNTARY DISMISSAL WITH PREJUDICE

The undersigned counsel for plaintiff R. Davis Howe ("Howe"), defendants The Bank of New York Mellon, as Indenture Trustee ("BNY Mellon") and Bimini Capital Management, Inc. ("Bimini Capital"), and nominal defendants BNY Mellon and Preferred Term Securities XX, Ltd. ("PreTSL XX") hereby stipulate and agree that:

WHEREAS, Howe has filed a First Amended Complaint in connection with his purchase of notes issued by nominal defendant PreTSL XX;

WHEREAS, the Court issued a March 4, 2011 Opinion and Order addressing certain issues in the case;

WHEREAS, defendants deny any such liability or wrongdoing in connection with the claims asserted in the Complaint;

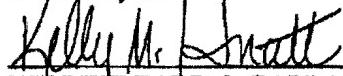
WHEREAS, the parties wish to resolve this action;

NOW, THEREFORE, Howe, BNY Mellon, Bimini Capital and nominal defendants BNY Mellon and PreTSL XX stipulate that:

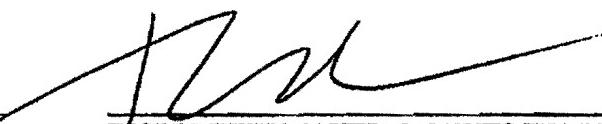
1. All claims and causes of action alleged against BNY Mellon, Bimini Capital and PreTSL XX in this action are dismissed with prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, with each party bearing its own costs and attorneys' fees;
2. All claims and causes of action alleged against Hexagon Securities LLC were previously dismissed with prejudice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, pursuant to the Stipulation and Order of Voluntary Dismissal With Prejudice of Claims Against Hexagon Securities LLC, entered by the Court on December 8, 2010; and
3. This Stipulation may be executed in counterparts and signed by facsimile or electronically.

In accordance with Rule 41(a)(1)(A)(ii), this stipulation is signed and agreed to by all parties who have appeared.

New York, New York
March 24, 2011


WILLKIE FARR & GALLAGHER LLP
Kelly M. Hnatt (khnatt@willkie.com)
Benjamin P. McCallen (bmccallen@willkie.com)
787 Seventh Avenue
New York, New York 10019
Phone: (212) 728-8000
Fax: (212) 728-8888

Attorneys for Defendant Bimini Capital Management, Inc.


WOLLMUTH MAHER & DEUTSCH LLP
Robert D. Piliero (rpiliero@wmd-law.com)
500 Fifth Avenue, 12th Floor
New York, New York 10110
Tel.: (212) 382-3300
Fax (212) 382-0050
Attorneys for Plaintiff R. Davis Howe

Dale C. Christensen

SEWARD & KISSEL LLP

Dale C. Christensen Jr. (christensen@sewkis.com)
Brian P. Maloney (maloney@sewkis.com)
One Battery Park Plaza
New York, New York 10004
Phone: (212) 574-1200
Fax: (212) 480-8421

*Attorneys for Defendant and Nominal
Defendant The Bank of New York Mellon, as
Indenture Trustee*

Joel M. Mitnick

SIDLEY AUSTIN LLP
Joel M. Mitnick (jmitnick@sidley.com)
Gina M. Delchiaro (gdelchiaro@sidley.com)
787 Seventh Avenue
New York, New York 10019
Phone: (212) 839-5300
Fax: (212) 839-5599

*Attorneys for Nominal Defendant Preferred
Term Securities XX, Ltd.*

Robert Sidorsky

BUTZEL LONG
Robert Sidorsky (sidorsky@butzel.com)
380 Madison Avenue
New York, New York 10017
Tel. (212) 818-1110
Fax (212) 818-0494

Attorneys for Plaintiff R. Davis Howe

Rsh 22

WEIL, GOTSHAL & MANGES LLP
Richard L. Levine (richard.levine@weil.com)
767 Fifth Avenue
New York, New York 10153
Phone (212) 310-8000
Fax: (212) 310-8007

Attorneys for Defendant Hexagon Securities LLC

SO ORDERED

Harold Baer, Jr.
Honorable Harold Baer, Jr.
UNITED STATES DISTRICT JUDGE

3 | 24 | 11
Date